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29 September 2023

Ms Anna Collyer
Chair
Australian Energy Market Commission
GPO Box 2603
SYDNEY, NSW, 2001

Dear Ms Collyer

Re: Enhancing community engagement in transmission building

The AER welcomes the opportunity to respond to the Australian Energy Market Commission's (AEMC) draft determination on enhancing community engagement in transmission building.

The AER broadly supports the draft determination as a means to implement the recommendations from the TPIR stage 2 report to have clear and consistent community engagement during major transmission planning. The AER seeks to ensure that the implementation of the regulatory framework supports quality engagement during the RIT-T and that TNSPs build and maintain trust with local communities. Ultimately this would aid the delivery of these projects on time and result in better outcomes for consumers.

Expansion of definitions

The AER supports the proposed expanded definition of 'preparatory activities' to specify engagement with a broader range of stakeholders. This will help ensure the definition of potential stakeholders impacted is clearly signalled.

The AER welcomes explicitly including traditional owners as some of the stakeholder groups to be engaged with, in recognition of the deep relationship between energy infrastructure and Indigenous landscapes.

We have identified potential issues that may need to be considered to ensure the proposed drafting achieves the overall policy intent of the rule change. These are discussed below.

Reflecting engagement in RIT-T options assessment

As a result of the proposed rule change expanding the definition of interested parties, stakeholders would reasonably expect that the issues these new parties raise can and should be included in identifying and comparing credible options under the RIT-T and that these issues could and should make a difference to the outcome of the RIT-T analysis.

Under the National Electricity rules, transmission investment proponents must assess credible options in terms of its market benefits— that is, benefits enjoyed (or a negative benefit incurred) in the capacity of being a producer, transporter or consumer of electricity in the National Electricity Market. The AER will shortly publish the first in a series of papers to provide greater guidance on how issues raised in broader community engagement and the pursuit of social licence can be factored into this framework.

The definition of interested party for ISP and non-ISP projects

Part (a) in clause 5.15.1 in the draft rule outlines that an interested party is required to potentially ‘suffer a material and adverse NEM impact’ (this is consistent with the current NER for all RIT-Ts). The proposed part (b) introduces a requirement specific to RIT-Ts for actionable ISP projects, requiring interested parties be ‘reasonably expected to be affected’.

The current drafting could be interpreted as intending part (a) to apply only to non-ISP projects and intending part (b) to apply only to actionable ISP projects. We recommend that the drafting of the Rules clarify whether interested parties for actionable ISP projects must satisfy both parts (a) and (b), or whether they would fulfill the definition if they come within either part (a) or part (b).

Dispute resolution

The proposed rule would expand the scope of people considered ‘interested parties’ consulted on in the RIT-T for actionable ISP projects. Under NER 5.16B(a), interested parties may, by notice to the AER, dispute conclusions made by the RIT-T proponent in the project assessment conclusions report.

Interested parties will still need to satisfy the existing criteria set out in the rules to raise a dispute. This includes ensuring that the dispute is not raised in relation to matters that are treated as externalities or relates to an individual’s personal detriment or property rights.

The AER would like to highlight that, while the RIT-T dispute resolution plays an important role as a backstop and guarantee for stakeholders, it should not become the norm. Instead, the Rules and AEMC’s final determination should reflect that the TNSP’s engagement should be the primary forum for identifying and addressing issues surrounding social licence for these projects.

Community engagement expectations

The AER supports inserting a definition of community engagement expectations in the NER that is consistent across actionable ISP projects, future ISP projects or projects within a REZ stage. This will ensure minimum expectations for community engagement TNSPs must adhere to are specifically outlined within the Rules, bearing in mind that industry good practice should continue to evolve and grow beyond these levels. The AER anticipates that further guidance, for example in response to the Australian Energy Infrastructure Commissioner’s review will shape this. We also acknowledge that the sector has already taken steps to improve behaviour through the efforts of the Energy Charter.

Transitional provisions

The AER supports the transitional provision outlined in the draft rule that requires the AER to update the Cost Benefit Analysis (CBA) guideline and in doing so must comply with the Rules consultation procedures. The AER recommends that this transitional period, rather than specifying 12 months, states 'by the end of 2024'. This will enable the AER to implement this update to the CBA guideline concurrently with others we have planned for 2024 including implementation of the emissions reduction element of the National Energy Objectives and broader guidance on the treatment of social licence.

The AER supports the provision outlined in the draft rule that for the purposes of the CBA guideline if the AER undertakes consultation or steps equivalent to that prior to the commencement date, then that consultation is taken to satisfy the requirements under the Rules consultation procedures. This provision will enable the AER to consider consultation on the CBA guideline more holistically. This may be in the form of streamlining multiple amendments to the CBA guideline in the one consultation procedure. This will facilitate efficient use of both AER and stakeholder resources and minimise engagement fatigue.

Yours sincerely



Stephanie Jolly
Executive General Manager
Consumers, Policy and Markets

Sent by email on: 29.09.2023